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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/830,174	04/21/2004	Donald L. Peinetti	040180-000140US	8154
20350 7590 12/11/2007 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			EXAMINER NGUYEN, SON T	
			ART UNIT 3643	PAPER NUMBER
			MAIL DATE 12/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/830,174

Applicant(s)

PEINETTI ET AL.

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the appeal brief filed on 9/10/07, PROSECUTION IS HEREBY REOPENED. A new ground of rejection set forth below. Note that since prosecution is reopened, the pending set of claims is the one submitted on 8/30/06, to which Applicant amended the claims to necessitate finality.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Peter M. Poon/

Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1,3-12** are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lee (6637376) in view of Price et al. (4965552).

For claim 1, Lee teaches an apparatus for controlling animal comprising an animal collar assembly (col. 2, lines 62-65); a detector 100 for detecting a transmitted signal indicating the detector is located within a first zone (col. 2, lines 30-65, col. 3, lines 13-50); a correction signal generator 10,110 coupled with said detector and configured to apply a first sequence of correction signals transmitted to said animal for controlling said animal (col. 2, lines 20-22, col. 3, lines 1-13,52-67); wherein said correction signal generator is further configured to apply a second sequence of

correction signals transmitted to said animal for controlling said animal and wherein said second sequence is different from said first sequence (col. 3, lines 52-67, col. 4, lines 1-19); wherein said correction signal generator is further configured to apply said second sequence of correction signals if said animal does not leave said first zone in response to said first sequence of correction signals after a period of time (col. 2, lines 20-22, col. 3, lines 1-13, 52-67, different intensity is applied in the second correction signals once determination that the animal has not moved since applying the first correction signals). In addition, it appears that Lee teaches a random time interval generator for randomizing the time intervals between said correction signals in said second sequence of correction signals. See fig. 3 and col. 5, lines 15-20, t_1 and t_2 (bottom graph) are random time and not constant (top graph). Random time interval produces different duty cycle, hence, varying intensity.

However, if this is not the case, then Price et al. teach in the same field of endeavor of animal control/training as Lee, in which Price et al. employ a random time interval generator (col. 7, lines 1-25) so that the animal would not be accustomed to repeated stimulus. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a random time interval generator as taught by Price et al. in the apparatus of Lee in order to prevent the animal to become accustomed to the stimulus. *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

For claim 3, again, as mentioned in the above, Lee appears to be teaching said second sequence of correction signals comprises a randomized sequence of signals

(col. 4, lines 58-68,col. 5, lines 1-53). However, if this is not the case, then as mentioned in the above, Price et al. teach a randomized sequence of signals (col. 4, lines 1-10,col. 5, lines 65-68,col. 6, lines 1-68,col. 7, lines 1-30). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a random time interval generator as taught by Price et al. in the apparatus of Lee so that said second sequence of correction signals comprises a randomized sequence of signals in order to prevent the animal to become accustomed to the stimulus. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

For claim 4, again, as mentioned in the above, Lee appears tot be teaching wherein said randomized sequence of signals comprises random intervals between application of each successive signal in said randomized sequence of signals (col. 4, lines 58-68,col. 5, lines 1-53). However, if this is not the case, then as mentioned in the above, Price et al. teach a randomized sequence of signals (col. 4, lines 1-10,col. 5, lines 65-68,col. 6, lines 1-68,col. 7, lines 1-30). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a random time interval generator as taught by Price et al. in the apparatus of Lee so that said randomized sequence of signals comprises random intervals between application of each successive signal in said randomized sequence of signals in order to prevent the animal to become accustomed to the stimulus. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

For claim 5, both Lee and Price et al. teach wherein said correction signal generator is configured to transmit at least one sound in the audible range of said animal as said first sequence of correction signals and as said second sequence of correction signals (col. 4, lines 21-32 of Lee and col. 3, lines 40-45 of Price et al.).

For claim 6, both Lee and Price et al. teach wherein said correction signal generator is configured to transmit an electrical stimulation to said animal in said first sequence of correction signals and in said second sequence of correction signals (col. 4, lines 21-32 of Lee and col. 3, lines 40-45 of Price et al.).

For claim 7, Lee as modified by Price et al. (emphasis on Lee) further teaches wherein prior to generation of said second sequence of correction signals, said correction signal generator is configured to generate successive sets of correction signals wherein each of said successive sets of correction signals has a voltage magnitude greater than the immediately preceding set of corrections signals (col. 5, lines 22-60).

For claim 8, Price et al. further teach wherein each of said signals in said first sequence of correction signals is separated by a separation interval and wherein said separation interval decreases with each successive signal of said first sequence of correction signals (col. 7, lines 1-30). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a random time interval generator, wherein each of said signals in said first sequence of correction signals is separated by a separation interval and wherein said separation interval decreases with each successive signal of said first sequence of correction signals as

taught by Price et al. in the apparatus of Lee in order to prevent the animal to become accustomed to the stimulus. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

For claim 9, Lee as modified by Price et al. (emphasis on Lee) further teaches wherein said detector is further configured to determine a period of time in said first zone after detection of said transmitted signal indicating said detector is located within said first zone (col. 2, lines 30-65).

For claim 10, Lee as modified by Price et al. (emphasis on Lee) further teaches wherein said generator is configured to apply said second sequence of correction signals if said time exceeds a predetermined period of time (col. 2, lines 20-22,30-65, col. 5, lines 1-32).

For claim 11, Lee as modified by Price et al. (emphasis on Lee) further teaches wherein said detector for detecting said transmitted signal is configured to detect a strength of said transmitted signal and wherein said strength of said transmitted signal is related to positioning within said first zone (col. 2, lines 43-61).

For claim 12, Lee as modified by Price et al. (emphasis on Lee) further teaches wherein said correction signal generator utilizes said strength of said transmitted signal to determine the magnitude of the initial correction signal applied (col. 2, lines 43-67,col. 3, lines 1-13).

Response to Arguments

5. Applicant's arguments with respect to claims 1,3-12 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Son T. Nguyen/
Primary Examiner
AU3643